

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA**

MARTIN SANCHEZ ALANIS,
Petitioner,
v.
COPENHAVEN, Warden,
Respondent

Case No. 1:13-CV-1870-SMS
TRANSFER ORDER

Petitioner is a federal prisoner sentenced to a 108 month prison term for illegal reentry in violation of 8 U.S.C. §§ 1326(a) and (b)(2). On October 25, 2013, Petitioner filed the instant petition for writ of habeas corpus *in propria persona* pursuant to 28 U.S.C. § 2241. Doc. 1.

FACTS

As of October 10, 2012, Petitioner was housed at the Federal Correctional Institution (FCI) at Yazoo City, Mississippi. On that date he appeared at a disciplinary hearing held before a Discipline Hearing Officer (“DHO”). Exhibits A, B, C, D; *see* 28 C.F.R. § 541.8 (hearing procedures). According to DHO reports prepared on November 30, 2012, Petitioner admitted to four charges regarding events occurring on June 30, 2012 (attempted assault), July 4, 2012 (two counts of assault), and August 20, 2012 (damaging a life safety device), all occurring at FCI Yazoo City. *Id.*

Under BOP regulations, each of these offenses was considered a “high severity level offense.” 28 C.F.R. § 541.3; *cf.* § 541.4(b)(2) (mandatory penalty for individuals sentenced under the Prison Litigation Reform Act (PLRA)); § 541.3 (maximum possible penalty); § 541.8 (g). For

1 each of these four charges, the DHO’s chosen sanction included “Disallowance Good Conduct
2 Time: 27 Days.” Petitioner appealed the sentence administratively, arguing (then and now) that it is
3 not lawful to deprive a prisoner of non-vested good credit time. *Cf. Brown v. McGrew*, 2013 WL
4 6512948 (C.D. Cal. Dec. 12, 2013) (discussing good time credit under PLRA); *Rosa v. Grondolsky*,
5 2013 WL 3491077 (D. Mass. July 9, 2013) (same).

6 Relevant regulations governing administrative appeals appear at 28 C.F.R. §§ 542.13-18;
7 *see also Sejour v. Sanders*, 2012 WL 1247185 (C.D. Cal. Jan. 18, 2012) (discussing exhaustion
8 requirement). Each report indicated that Respondent was “advised of his right to appeal this action
9 within 20 calendar days under the Administrative Remedy Procedure,” and adds that “a copy of this
10 report has been given to the inmate.” *Id.* The reports indicate that they were “Delivered to Inmate”
11 on December 7, 2012. *Id.* From the attached exhibits, it appears that Plaintiff submitted a Regional
12 Administrative Remedy Appeal on February 15, 2013. This was rejected by the Regional Director
13 on March 7, 2013, though not as untimely, with guidance that further appeal could be obtained
14 within 30 days from the Office of General Counsel, the highest level of administrative appeal.
15 Petitioner did not file this appeal until May 23, 2013. Addressing his untimeliness, Petitioner stated
16 that he did not receive the Regional Director’s response until March 19, 2013; that on March 20,
17 2013 he was then transferred to the U.S. Penitentiary (“USP”) in Atwater, California; and that he
18 did not receive his legal papers until May 14, 2013. Doc. 1-1 at 30.

19 On June 5, 2013, these appeals were rejected. The reason given was, “Your appeal is
20 untimely.” Exhibit I (doc. 1-1 at 20). It also said, “Provide staff verification stating reason untimely
21 filing was not your fault.” Petitioner did not do so. *See* 28 C.F.R. § 542.17.

22 On or about October 3, 2013, Petitioner was transferred to the USP in Tucson, Arizona.
23 Doc. 10. On October 25, 2013 he filed this petition in the District Court for the District of
24 Columbia, naming as defendant the warden at USP Atwater. Addressing the untimeliness issue, he
25 attached a property sheet which, he claims, shows that he did not receive his property until May 16,
26 2013. The property sheet bears a handwritten notation, “Issued [illegible] 5/16/13 /s/ Garza.” It also
27 apparently bears the signature of Petitioner indicating that his property was returned to him on
28

1 April 30, 2013. On October 25, 2013, the D.C. District Court ordered the case transferred to this
2 District.

3 **DISCUSSION**

4 ***Jurisdiction Over the Person***

5 Title 28 U.S.C. § 2241(a) provides that writs of habeas corpus may be granted by the district
6 courts “within their respective jurisdictions.” A writ of habeas corpus operates not upon the
7 prisoner, but upon the prisoner's custodian. *Braden v. 30th Judicial Circuit Court of Kentucky*, 410
8 U.S. 484, 494–495, 93 S.Ct. 1123, 35 L.Ed.2d 443 (1973). A petitioner filing a petition for writ of
9 habeas corpus under § 2241 must file the petition in the judicial district of the Petitioner's
10 custodian. *Brown v. United States*, 610 F.2d 672, 677 (9th Cir.1990). The warden of the
11 penitentiary where a prisoner is confined constitutes the custodian who must be named in the
12 petition, and the petition must be filed in the district of confinement. *Id.*; *Rumsfeld v. Padilla*, 542
13 U.S. 426, 446–47, 124 S.Ct. 2711, 159 L.Ed.2d 513 (2004). A failure to name and serve the
14 custodian deprives the Court of personal jurisdiction. *Johnson v. Reilly*, 349 F.3d 1149, 1153 (9th
15 Cir.2003).

16 The D.C. District Court transferred Petitioner's case to this District on the grounds that he
17 was incarcerated at USP Atwater. However, the petition indicates that when Petitioner filed the
18 case, he was a prisoner at USP Tucson. This case is therefore transferred to the District of Arizona,
19 at which point the warden of USP Tucson may be substituted as the proper defendant pursuant to
20 FRCP 25(d).

21 **ORDER**

22 Accordingly, the Clerk of the Court is HEREBY DIRECTED transfer this case to the
23 United States District Court for the District of Arizona.

24 IT IS SO ORDERED.
25

26 Dated: January 8, 2014

27 /s/ Sandra M. Snyder
28 UNITED STATES MAGISTRATE JUDGE